

1927

# c 189 Adoption Act

Ontario

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## Bibliographic Citation

*Adoption Act*, RSO 1927, c 189

## Repository Citation

Ontario (1927) "c 189 Adoption Act," *Ontario: Revised Statutes*: Vol. 1927: Iss. 2, Article 62.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1927/iss2/62>

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## CHAPTER 189.

## The Adoption Act.

**1.**—(1) Upon an application in the prescribed manner by any person desirous of being authorized to adopt an infant under the age of twenty-one years, who has never been married, or to adopt any other person where the Attorney-General has in writing consented to such application being made, the court may, subject to the provisions of this Act, make an order (in this Act referred to as an "adoption order") authorizing the applicant to adopt that infant or other person as the case may be. Application for order.

(2) Hereafter in this Act an infant or other person so sought to be adopted, a person so authorized to adopt an infant or other person, and the infant or other person authorized to be adopted are referred to as an "infant" and "adopting parent" and an "adopted child" respectively. "Infant," "Adopting parent," "Adopted child."

(3) Where an application for an adoption order is made by a husband and wife jointly, the court may make the order authorizing them jointly to adopt, but save as aforesaid no adoption order shall be made authorizing more than one person to adopt an infant. 1927, c. 53, s. 2. Joint application.

**2.**—(1) An adoption order shall not be made in any case where,— When order not to be made.

(a) the applicant is under the age of twenty-five years; or

(b) the applicant is less than twenty-one years older than the infant in respect of whom the application is made.

Provided, that where the applicant and the infant are within the prohibited degrees of consanguinity, it shall be lawful for the court, if it thinks fit, to make the order notwithstanding that the applicant is less than twenty-one years older than the infant. Proviso.

(2) An adoption order shall not be made in any case where the sole applicant is a male and the infant in respect of whom the application is made is a female unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order. Special circumstances.

Consent  
required.

(3) An adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the infant in respect of whom the application is made or who has the actual custody of the infant or who is liable to contribute to the support of the infant: Provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is incapable of giving such consent or, being a person liable to contribute to the support of the infant, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with, but no order dispensing with the consent of any person shall be made without notice to him, unless it is made to appear that after reasonable diligence he cannot be found.

Proviso.

Notice to  
provincial  
officer.

(4) An adoption order shall not be made without notice to the provincial officer or in lieu of notice, his consent to the order.

No order  
without con-  
sent of hus-  
band or wife  
of adopting  
parent.

Proviso.

(5) An adoption order shall not be made upon the application of a husband or wife without the consent of the wife or husband as the case may be: Provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with cannot be found, or is incapable of giving such consent or that the husband and wife have separated and are living apart and that the separation is likely to be permanent.

Applicant to  
be resi-  
dent and  
domiciled in  
Ontario.

(6) An adoption order shall not be made in favour of any applicant who is not resident and domiciled in Ontario, or in respect of any infant who is not a British subject and resident within Ontario. 1927, c. 53, s. 3.

Conditions  
precedent to  
granting of  
order.

**3.** The court before making an adoption order shall be satisfied that,—

Consent.

(a) every person whose consent is necessary under this Act and whose consent is not dispensed with has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights; and

Welfare  
of infant.

(b) the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant; and

- (c) the applicant has not received or agreed to receive, No payment to applicant.  
and that no person has made or given, or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction. 1927, c. 53, s. 4.

**4.** The court in an adoption order may impose such terms Terms and conditions.  
and conditions as the court may think fit and in particular may require the adopting parent by bond or otherwise to make for the adopted child such provision (if any) as in the opinion of the court is just and expedient. 1927, c. 53, s. 5.

**5.—(1)** Upon an adoption order being made, the child Use of name of adopting parent and rights.  
shall, unless the adopting order otherwise provides, assume the surname of the adopting parent and all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopting parent as though the adopted child was a child born to the adopting parent in lawful wedlock, and in respect of the same matters and in respect of the liability of a child to maintain its parents the adopted child shall stand to the adopting parent in the position of a child born to the adopting parent in lawful wedlock; Provided that, in any case where a husband Proviso.  
and wife are the adopting parents, they shall in respect of the matters aforesaid and for the purpose of the jurisdiction of any court to make orders as to the custody and maintenance of and right of access to children stand to each other and to the adopted child in the same relation as they would have stood if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother respectively.

**(2)** An adoption order shall not deprive the adopted child Rights to and interest in property.  
of any right to or interest in property to which, but for the order, the child would have been entitled under any intestacy or disposition, whether occurring or made before or after the making of the adoption order, but shall confer on the adopted child upon the intestacy of the adopting parent, the same rights to and interests in the property of the adopting parent as a child born in lawful wedlock of the adopting parent, and the expressions "child," "children" and "issue" where used in any disposition made after the making of an adoption order by the adopting parent, shall, unless the contrary intention appears, include an adopted child or children or the issue of an adopted child.



Inheritance  
from  
adopting  
parent.

(3) Where an adopted child or the spouse or issue of an adopted child takes any interest in real or personal property under a disposition by the adopting parent, or where an adopting parent takes any interest in real or personal property under a disposition by an adopted child or the spouse or issue of an adopted child, any succession, legacy or other duty which becomes leviable in respect thereof shall be payable at the same rate as if the adopted child had been a child born to the adopting parent in lawful wedlock.

"Dis-  
position."

(4) For the purposes of this section, "disposition" means an assurance of any interest in property by any instrument whether *inter vivos* or by will, including codicil.

Insurance  
rights.

(5) For the purposes of the enactments relating to fatal accidents and to insurance and to friendly societies, the adopting parent shall be deemed to be the parent of the child; and where before the adoption order was made any insurance has been effected by the natural parent of the child, its rights under the policy shall, notwithstanding the adoption order, remain as though no such order had been made.

Not to be  
deemed child  
of adopting  
parent ex-  
cept for speci-  
fied purposes.

(6) Save as herein provided and as to persons other than the adopting parent, the adopted child shall not be deemed the child of the adopting parent.

Disposition  
of property  
where child  
dies intestate.

(7) If the adopted child dies intestate, his property acquired by himself or by gift or inheritance from his adopting parent or from the kindred of such parent shall be distributed as though he had been born in lawful wedlock to his adopting parent and property acquired from his natural parent or kindred shall descend as if no adoption order had been made.

Legitimation  
not to affect  
adoption  
order.

(8) An adoption order made with respect to an illegitimate child shall not in any way be affected by the intermarriage of its parents. 1927, c. 53, s. 6.

Interim  
order.

**6.**—(1) Upon any application for an adoption order, the court may postpone the determination of the application and may make an interim order (which shall not be an adoption order for the purposes of this Act) giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the court may think fit.

Consent.

(2) All such consents as are required to an adoption order shall be necessary to an interim order but subject to a like power on the part of the court to dispense with any such consent. 1927, c. 53, s. 7.

**7.** An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, and, upon any application for such further adoption order, the adopting parent under the adoption order last previously made shall, if living, be deemed to be the parent of the infant for all the purposes of this Act. 1927, c. 53, s. 8.

Effect of  
order on  
previous  
adoption.

**8.—(1)** The court having jurisdiction to make adoption orders under this Act, shall be the Supreme Court, or, at the option of the applicant, but subject to any rules under this section, the judge of the county court or of a juvenile court when the judge of the juvenile court has been designated by the Lieutenant-Governor in Council as a "judge" within the meaning of this Act, within whose jurisdiction either the applicant or the infant resides at the date of the application for the adoption order.

Who to  
make order.

(2) Rules in regard to any matter to be prescribed under this Act and directing the manner in which applications to the court are to be made, and dealing generally with all matters of procedure and incidental matters arising out of this Act, and for carrying this Act into effect may be made by the Lieutenant-Governor in Council.

Rules and  
regulations.

(3) An application for an adoption order may be heard and determined in chambers, and if the child was born out of wedlock this fact shall not appear upon the face of the adoption order. The papers used upon an adoption application shall be sealed up and shall not be open for inspection save upon the direction of a judge or the provincial officer.

Application  
to be heard  
in chambers.

(4) For the purpose of any application under this Act and subject to any rules under this section, the court may appoint some person to act as guardian *ad litem* of the infant upon the hearing of the application with the duty of safeguarding the interests of the infant before the court, and may direct the applicant to pay the costs of the person so appointed. 1927, c. 53, s. 9.

Guardian  
*ad litem*.

**9.** It shall not be lawful for any applicant or for any parent or guardian, except with the sanction of the court, to receive any payment or other reward in consideration of the adoption of any infant under this Act or for any person to make or give or agree to make or give to any applicant or to any parent or guardian any such payment or reward. 1927, c. 53, s. 10.

Payment  
or reward  
unlawful.

Exception.

**10.** Where at the date of the commencement of this Act any infant is in the custody of, and being brought up, maintained and educated by any person or a husband and wife jointly as his, her or their own child under any *de facto* adoption, the court may, upon the application of such person or husband and wife, and notwithstanding the provisions of this

Adoption  
order where  
consent of  
parent or  
guardian not  
required.

Act, make an adoption order authorizing him, her or them to adopt the infant without requiring the consent of any parent or guardian of the infant to be obtained, upon being satisfied that in all the circumstances of the case it is just and equitable and for the welfare of the infant that no such consent should be required and that an adoption order should be made. 1927, c. 53, s. 11.

Trans-  
mission of  
copy of  
order to  
Registrar-  
General.  
Rev. Stat.  
c. 78.

**11.**—(1) The proper officer of the court shall transmit a copy of every adoption order to the Registrar-General, under *The Vital Statistics Act*, within ten days of its making.

"Adopted  
children  
register."

(2) The Registrar-General shall establish and maintain a register to be called the "Adopted Children Register," in which shall be recorded all adoption orders.

Reference  
in Birth  
Register.

(3) The Registrar-General shall cause the birth entry or entries in the register of birth of the child adopted, to be marked with the word "Adopted" with a reference to the adoption register, and shall also cause to be included in the entry in the adoption register recording the adoption, a reference to the registration of the birth of the adopted child. 1927, c. 53, s. 12.

Rights of  
adopted non-  
resident as  
to succe-  
sion in  
Ontario.

**12.** A person domiciled in any other province of the Dominion of Canada who has been adopted in accordance with the laws of the province where he is domiciled, shall be entitled to the same rights of succession as to property in Ontario as he would have had in the province in which he was adopted but not exceeding the right he would have had if adopted under this Act. 1927, c. 53, s. 13.

"Provincial  
Officer."

**13.** The Lieutenant-Governor in Council may appoint an officer in the public service to be known as "The Provincial Officer" for the purposes of this Act. 1927, c. 53, s. 14.

Application  
of Act to  
1921, c. 55.

**14.** The property and rights of all children adopted under the Act, 11 George V, chapter 55, shall be governed by the provisions of this Act. 1927, c. 53, s. 15.

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